

**ADDRESS AT THE CONFERENCE OF DISTRICT JUDGES AND DISTRICT
MAGISTRATES**

By

**BY JUSTICE MAHARAJAN
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My Lord the Chief Justice, Hon'ble colleagues and colleagues of the state Judiciary,

While I was a District Judge, I made repeated representations to the High Court about the need and the urgency for convening a conference of this kind. Mr. Justice P.Rajagoplan, who had a passionate preference for District Magistrates, vetoed my proposal on the ground that the government would not pay traveling allowance to the district Judges. I am delighted that our dynamic Chief Justice has found the will and the means to convene such a conference and translate our dreams into a reality. The beneficial effects of such a conference are considerable.

Very often, we start our judicial careers as District Munsifs in some Taluk Centres. I myself was posted as District Munsif first to Vriddhachalam. There you represent the very peak of authority. Everybody looks up to you. Your judgments can make or mar the lives of men litigating before you. If you are young and immature, you become drunk with your own sense of importance and become immune to all possibilities of improvement. A professor of Literature came and stayed with me for some days while I was a District Munsif and after observing all the incense that was being burnt before me, he said,

“You seem to be a most important person in this place. You are in fact a dog on its own dung-hill”.

I would never forget this cynical yet true remark. Very few could tell a Judge to his face what his defects are. Some sycophant lawyers, on the eve of getting an order of attachment before judgment or an interim injunction, come and tell you in the Chambers,

“During the past 30 years, I have not seen a man with such a wonderful knowledge of law and legal acumen as yourself”.

Most of us take these flattering words at their face value. We never bother to put ourselves under the microscope and detect our own infirmities and limitations. We refuse to grow, because we live in a kind of ivory tower, which is accessible only to a few flatterers who assure us that we represent the limit of judicial wisdom. The only corrective I can think of is to rub shoulders with fellow judicial officers, compare notes with them and discuss administrative and judicial problems with earnestness and with a view to self improvement. I used to hand over my judgments after they were delivered to senior judicial officers and request them to criticize my judgments candidly and mercilessly, so that I could improve myself. I have benefited very considerably from

such discussions. I consider that judicial officers must have enough humility to understand that it is part of their judicial duty to be perpetual students, to learn every minute and to keep sharpening their judicial sensibilities till they retire. That kind of humility is bound to be induced by conferences of this kind.

I may recall the case of a friend of mine, who retired as District Judge and who served under me as a Subordinate Judge. He was blissfully unaware of his judicial infirmities till his promotion was withheld by the High Court on the ground that he did not know how to write a judgment. He came and complained to me:

“All these 25 years, I have been a judicial Officer. I have never been told by anybody that there was anything wrong with my judgment. Will you please tell me what is wrong?”

I told him,

“Evidently, you have insulated yourself from all criticism. You reproduce the evidence of each witness in your judgment: “P.W 1 says this, P.W 2 says that, D.W 1 says this, and D.W. 2 says that.” You then list out the exhibits and give the particulars of those Exhibits. Then in the one and only original sentence of yours, you say in your judgment: “I therefore conclude that the plaintiff has no case and dismiss the suit”.”

Now, this Judicial Officer had been doing it for two decades and nobody at the Bar dare bring his defects to his notice. Had he compared notes with his colleagues and exposed himself to healthy criticism, he could certainly have rectified his defects.

I want that the discussions of this conference must be in groups, intimate and informal. Open yourself out to your colleagues and ask them to criticize you in a friendly manner and learn how to tolerate that criticism. Most of us have to work at high pressure and we, therefore, tend to become mechanical and wooden. Our former chief justice Mr.Anantanarayanan used to say that the very act of judging fellow-men vitiates the Judge’s personality. That statement contains, I am afraid, merely a half truth. What vitiates the judicial personality is, not the act of judging fellow-men, but the pernicious manner in which the act is performed. If the act of judgment is informed by the cold light of reason and the warmth of humanism and a missionary zeal to render justice, it is bound to contribute to the fullness and richness of a judicial career.

My learned brother, Mr.Justice K.S.Venkataraman, has told you about the number of difficulties which we, at the Referred Trial Bench, had to come up against. Once, my learned brother had to spend six hours before correlating successfully the numbers of Material Objects in a particular case with the item numbers in the Chemical Examiner’s report. That was because the numbers given by the Chemical Examiner and the Serologist did not tally, and the numbers given by either of them did not tally with the numbers allotted by the trial court to the Material Objects. Some mistakes committed by an inadvertent Sessions Judge on this account have caused two judges of the High Court dealing with the Referred Trial Case so many hours to trace the root of the mistake. If

the mistake had not been traced and rectified, the defence counsel concerned could argue with impunity that neither the weapon nor the garments seized from the accused bore any incriminating bloodstain. It is better, therefore, that sessions Judges while examining the Magisterial Clerk and marking through him the Magistrate's requisition and the reports of the Serologist and the Chemical Examiner, do the necessary correlation of the Material Objects' numbers with the item numbers allotted by the three authorities, viz, the Sub Magistrate, the Chemical Examiner and the Serologist. If care is taken to record this correlation in the deposition of the Magisterial Clerk, there will be no need to waste judicial time at any later stage.

Another thing I wish to emphasise is what has been referred to by my learned brother Krishnaswamy Reddy, J viz., the importance and the value of the great weapon that section 165 of the Evidence Act gives every judicial Officer for getting at the truth. The power given to the Judges under section 165 of the Evidence Act is very much unlike the power a Judge enjoys under the French system. While I was in Pondicherry and by force of habit I tried to apply section 165 of the Evidence Act, I was repeatedly told by French Jurists that the French Law expects a Judge to behave like an Umpire in a boxing contest. He can give a ruling - "It is fair or foul" but he cannot participate in the game or interfere with it. You must allow the parties to lead such evidence as they choose. You cannot direct them to produce documents. When both the parties ask the judge not to go on with the trial, but to adjourn it, the Judge should put the whole case in cold storage till the parties in God's good time want a revival of the trial. The French theory is that the Court has no business to poke its nose into the affairs of the litigant, and the litigants know their interests best. On the contrary, as pointed out by my learned brother, section 165 of the Evidence Act assigns a more dynamic role to the Judge in the quest for truth. It enables and empowers the Judge to put any question he pleases to any witness in any form at any time. You can even put irrelevant questions, and neither party can object to it on the ground of irrelevancy. The only limitation upon you is that you cannot act upon irrelevant evidence. The section gives you a precious opportunity to delve deeper and deeper into the case and get at the truth. How many of our Judges have the inclination or the energy to play the dynamic role, which my learned brother was referring to. Most of the doctors come into the box in a sessions trial and impose themselves upon the Court with their sesquipedalian Latinisms. They scare you off with words. How many of you have the curiosity and the inquisitiveness to probe energetically and scientifically into the basis of the doctor's opinion? If you do not understand their quaint medical jargon, tell them, "I don't understand your Latin. Please explain in a layman's language what you mean." After stripping the experts opinion of its pedantic-clothings, we shall be in a position to understand it and then probe into its rationale. As a Sessions Judge, I would never take the correctness of the doctor's opinion for granted. Because my questions were inconvenient, the doctors felt annoyed, and sometimes they felt forced to swallow their own opinions, when they were made to realise that they had been far too dogmatic. In fact, all the doctors at Coimbatore went on a deputation to the Director that I was harassing them by putting them inconvenient and some times, uncomplimentary questions. The Director told them, "I have been reading this particular Judge's criticism of doctors and I think his criticism is well founded. The doctors have a duty to explain their opinions to the court, and when confronted by the opinions of authorities in their

field, the doctors must have the scientist's humility to own their errors." Very frequently, we find young inexperienced men, who have put in just two years service as doctors, getting into the box and giving emphatic and unqualified opinions. Most of them are unscientific enough to feel that they have a vested interest in their opinions. They therefore try to justify their opinions by hook or by crook. Little do they realize that the impact of their opinions on the evidence has far-reaching consequences upon the lives and liberties and citizens.

Once a lady doctor, who had a very bad reputation, - that is what the then Director of Medical Services told me later, -came into the box. She admitted a patient, who had received a stab injury in the abdomen. She stitched up the external injury without bothering to probe into it.

Thirty days later, the injured man died. The question arose as to who was responsible for the murder. I had to decide the difficult question whether it was the simple hurt caused by the assailant that resulted in the murder or whether death was due to the negligence of the lady doctor, who sutured up the wound with unholy and negligent haste without even probing into it. I had no option but to conclude that it was the doctor who was responsible for the death. That doctor filed a petition in the High Court for expunction of my remarks, and an eminent Judge of the High Court summoned the First Physician of the Government of Madras to find out whether my opinion was correct, and the First Physician was examined here as a witness, - a rather extraordinary procedure. Luckily for me, the First Physician agreed with my opinion and put the blame squarely on the lady doctor. He opined that if the lady doctor had probed the wound and treated the patient, she could have discovered the puncture in the peritoneum and saved the patient by giving him the proper treatment. If I had unquestioningly accepted the lady doctor's opinion, I would have no option but to send the accused in that case to the gallows. Had I done so, I would have been guilty of a grave miscarriage of justice. That is why I say it is immoral for a Judge to be bamboozled by an expert into accepting his opinion uncritically. It is the duty of a judge to equip himself with knowledge in the special field of the expert. Otherwise, he will be brow-beaten and confounded by the expert. Take for instance, the Workmen's compensation cases, in which doctors give gratuitous opinions about the loss of earning capacity of workmen as a result of his losing an eye or a limb or a finger. The doctor can certainly speak with authority about the extent of disability suffered, and say if it is a permanent partial or a permanent total disability. But he does not have the expertise necessary to estimate the loss of earning capacity of the disabled person - which is a matter to be decided by the Judge on the basis of relevant evidence. Most Judges, I find, accept the doctor's opinion as gospel truth and rely upon it, even without discussing it. It is therefore, good to remind you, as my learned brother Krishnaswamy Reddy, J has done, of your statutory duty to find out the truth undistracted by the attempts of either party to distort the truth. Mr.P.Ramakrishnan, who retired as a Judge of this Court, was the Principal District Judge of Tirunelveli, and I had to handle a brief before him, when I was a member of the Turunelveli Bar. Suddenly, the Judge asked, "You say your client is truthful How are you to find out the truth? I replied, "Truth, they say, lies at the bottom of a bottomless well. You can never see truth uncontaminated in this world. Absolute truth is not available for mortal eyes to see. All truth is mixed with untruth.

Therefore, it is all the more difficult for the Judges to sift truth from untruth.” Speaking of judicial difficulties in getting at the truth, I desire to say that we must give the judges every available facility for finding out the truth. When I was a Session Judge at Coimbatore, I made a request that the High Court might be pleased to supply to every Sessions Judge a human atlas produced by an English Company. It gives a three-dimensional representation of the skeletal system in three parts. One part gives a three dimensional representation of the skeletal system, the second part, of the muscular system, and the third of the nervous system. If a sword 9” long is thrust upward in the lower part of the abdomen, it is difficult for us to imagine which internal organs will be affected by the thrust. But this atlas will show us vividly the route of the injury. It cost Rs.15 in those days. But the request was turned down by the High Court on the ground that it would be costly to supply the atlas to every Sessions Judge. (At this stage, the Chief Justice announced that he would direct the atlas to be supplied to every Sessions Judge.) I am so happy that my Lord the Chief Justice is now accepting my request, which was turned down previously. I dare say that it will be of immense help to the Sessions Judges.

Another, thing which I may refer to, is the need for Judges to take special interest in weeding out corruption. I think much can be done by the Sessions Judges in that direction. While I was Sessions Judge at Madurai, I learnt that whenever I passed a bail order, the Bench Clerk concerned would retain the copy of the order with himself and would not part with it to the lawyer till he was paid Rs.100. This had been happening, I was told, for over ten years. I told the Bench Clerk in open Court within the hearing of the Bar:

“As soon as I pass a bail order, I will give the office half an our to get it typed. It must be brought to my table by 1 p.m. for my signature, and the copies will be delivered in open Court to the lawyers concerned at 1 P.M.”

This practice immediately eliminated the corruption that had been in vogue for over a decade. If you have the missionary spirit, the zeal of a crusader, and if you feel that you are the instrument of a higher power sitting on the Bench, you must be able to find out many other effective ways of eliminating corruption of this kind. Lastly, I wish to say a word or two about exhibitionism in judgments. I have in my hands two judgments of a Sessions Judge. I have regard for this erudition and his wholesome cultural interests. So, I do not wish to mention his name. In one of his judgments, this is what he states:

“The learned Counsel for the accused submitted that there are instances in epics which show that the son had murdered his mother. He quoted in this connection poem No.144 in ‘Uthara Kandam’ in Kambaramayanaam at page 643, sixth volume, by V.M.Gopala krishnamachariar, 1962 Edition, wherein it has been stated that Parasurama who had been directed by his father Jamathagni killed his own mother Renugathevi since while she had gone to the river Ganga for bathing and bringing water for doing “Omam” by her husband, on seeing Chitrarathan, a Gandharva playing in the river along with Apsara women, had a liking on him and stood for sometime seeing him and when she came back to her husband with the water after some delay, her husband finding out the cause for her

delay directed his first four sons to kill her without any hesitation in their mind saying that she had lost her chastity since she had a liking for a moment towards a Gandhrava. But they refused to do so; but when Jamathagni directed his fifth son Parsurama to kill his mother, Parasurama killed his mother at once in obedience to his father's direction in order to save Dharma."

After dealing with the Parasurama episode, the learned Judge proceeds to quote several songs from Kamaramayana, presumably in order to prove that matricide is not something unusual.

Now, I shall take up the other judgments. That is a case where a mother commits infanticide, and that is the provocation for the Judge to narrate elaborately the story of "Nalla Thangal", and then to make a reference to Shakespeare's Merchant of Venice, from which nearly 25 lines are quoted beginning with the line, "The quality of mercy is not strained". These quotations, apart from failing to clarify any obscure truth of psychology or reinforcing any relevant argument, give the impression of an utter lack of judicial sobriety and dignity. Not that I am against literary pursuits by Judges. I would certainly like them to have the experience of enlargement of consciousness by sousing themselves in literature. But if that kind of extra-judicial learning is going to affect, impair or subvert the judicial faculty, it would be better for a Judge to abandon such pursuits. Literature ought to give you a correct imaginative and human approach to problems that you have to tackle. It ought not to intrude into the judgments as a piece of exhibitionism. I remember Chief Justice Spens of the Federal Court of India writing a judgment in which he made uncomplimentary references to Mr. Justice Sen of the Calcutta High Court and compared him with Alice in Wonderland. After the matter was remanded to Mr. Justice Sen, the latter in a judgment of austere dignity, admonished the Federal Court Judge for violating all judicial convention by referring to a fictitious character in the judgment. The Law Reports of England show that you can improve your judgments without importing literature into them. One exception to this rule was Lord Birkenhead, who was a triple First in Law, Literature and Politics and who had an extraordinary sense of appropriateness and could therefore quote literature in his judgments and get away with it. Milton after becoming blind, wrote a sonnet on his blindness. He said, God, you have made me blind, I trust you will accept even a blind man's services. The king has ambassadors, who ride across the hills and dales to foreign lands and serve him loyally. The king has also a Guardsman at his palace gate, who by merely standing and waiting at the gate serves the King with equal loyalty." After expressing this sentiment, Milton closed the sonnet with the line, "He also serves, who stands and waits". Lord Birkenhead quoted this line in a classic judgment of his. A man went inside his house and committed murder, whereas his friend stood at the gate to see nobody interfered with the murder. The question arose whether the accessory before the fact, that is to say, the man, who waited at the gate, would be equally guilty with the principal offender. Lord Birkenhead, while holding that he was equally guilty and inflicting life sentence on both, wound up his judgment with the Miltonic line, "He also serves who stands and waits." I do not think that men of lesser stature should ever attempt to quote from literature in their judgments.

In March, 1943, that is three months before I was appointed as District Muncif, I happened to make a speech on “Laughter and Tears” under the chairmanship of Mr.P.V.Balakrishna Iyer, who was the then District Judge of Tirunelveli and who later became a Judge of this High Court. The theme of the speech constrained me to send the audience into peals of laughter and then to make them shed tear of pathos. In his concluding speech, Mr.Balakrishna Iyer remarked, “Mr.Maharajan has been recruited to the judiciary. Very shortly he will be a District Munsif. I wish to give him this warning, “If you are going to import laughter into your judgments, you may have to shed tears’.” That is a piece of advice which I have tried my best to follow and which I commend to all of you for acceptance.